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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/578,211

06/13/2006

Richard Brian Perry

70336

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01/21/2011

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410 Swing Road  
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EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT

PAPER NUMBER

1616

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/578,211	<b>Applicant(s)</b> PERRY ET AL.	
	<b>Examiner</b> ALTON N. PRYOR	<b>Art Unit</b> 1616	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,4-24 is/are pending in the application.
- 4a) Of the above claim(s) 8-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4-7 and 24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Applicant's arguments filed 11/8/10 have been fully considered but they are not persuasive. Previous rejections and issues not addressed below are withdrawn.

#### **Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,4-7,23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kliegman et al. (US 4328026; 5/4/82), Rodham et al. (US 2002/0025986; 2/28/02) or Itoh et al. (US 2005/0159599; 7/21/05) and Burns et al. (5035738; 7/30/91). Kliegman et al. teach a composition comprising a cyclic amide (abstract, column 2 lines 19-22). Kliegman et al. teach that actives, including the herbicide paraquat, can be added to the composition (column 4 lines 18-32). Itoh et al. teach a composition comprising cyclic amides or cyclic amines such as 1,3-dimethyl-2-imidazolidone (abstract, paragraphs 91 and 92). Itoh et al. teach that actives, including the herbicide paraquat, can be added to the composition (paragraphs 108, 114-115). Rodham et al. teach a composition that can contain a water soluble amine including aminoethylpiperazine (paragraph 27) and a pesticide including the herbicide paraquat (paragraph 59). Neither of the prior art references exemplify a composition comprising paraquat and cyclic amides such as 1,3-dimethyl-2-imidazolidone and/or aminoethylpiperazine. In addition, neither of the prior art references teach a composition comprising paraquat plus a cyclic amine such as N-aminopropylmorpholine (APM). However, Burns et al. teach a herbicidal composition

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comprising N-aminopropylmorpholine (cyclic amine) and glyphosate (claim 1). It would have been obvious to combine the teachings of Kliegman et al., Rodham et al. or Itoh et al. and Burns et al. to arrive at an invention comprising paraquat and N-aminopropylmorpholine. One would have been motivated to do this since all references individually teach a herbicidal utility. It is obvious to combine references directed to the same utility. Moreover, it would have been obvious to make an invention comprising paraquat plus cyclic amides such as 1,3-dimethyl-2-imidazolidone and/or aminoethylpiperazine. One would have been motivated to do this because the prior art references suggest the combination of cyclic amides and/or cyclic amines plus paraquat. With respect to the concentration of paraquat, an artisan in the field would have been expected to determine the optimum paraquat concentration. One would have been motivated to do this in order to make an invention that would have been effective as a herbicide without destroying desirable plants.

#### Response to Applicants' Argument

The Applicants argue that Kliegman recites hundreds of possible additives, including paraquat, that could be used with phosphoranyl derivatives. In addition, Itoh discloses numerous other herbicides, including paraquat, that can be used with cyclic compounds to control pest. Each of the teachings of Kliegman, Rodham and Itoh fails to teach or suggest a formulation comprising paraquat and N-(aminopropyl)morpholine. The Examiner argues that Kliegman and Itoh provide a finite list of other compounds, including paraquat that could be combined with phosphoranyl derivatives and cyclic compounds, respectively. Since paraquat is recited in the finite list it would have been obvious to artisan to have chosen any one of the actives, including

paraquat to combine with phosphoranyl derivatives or cyclic compounds recited in Kliegman and Itoh, respectively. ). The Examiner reiterates:

1) Kliegman et al. teach a composition comprising a cyclic amide (abstract, column 2 lines 19-22). Kliegman et al. teach that actives, including the herbicide paraquat, can be added to the composition (column 4 lines 18-32);

2) Itoh et al. teach a composition comprising cyclic amides or cyclic amines such as 1,3-dimethyl-2-imidazolidone (abstract, paragraphs 91 and 92). Itoh et al. teach that actives, including the herbicide paraquat, can be added to the composition (paragraphs 108, 114-115); and 3) Rodham et al. teach a composition that can contain a water soluble amine including aminoethylpiperazine (paragraph 27) and a pesticide including the herbicide paraquat (paragraph 59). Applicants argue that it would not have been obvious to employ Burns et al with the other references in the rejection. Applicants argue Burns et al. have the utility of employing N-(aminopropyl)morpholine to reduce the volatility of the active compound as opposed to yielding a herbicide utility like the other references in the rejection. The Examiner reiterates that Burns et al. disclose a composition comprising N-(aminopropyl)morpholine and glyphosate(claim 1). It would have been obvious to combine the teachings of Kliegman et al., Rodham et al. or Itoh et al. and Burns et al. to arrive at an invention comprising paraquat and N-(aminopropyl)morpholine. One would have been motivated to do this since all references individually teach a herbicidal utility. It is obvious to combine references directed to the same utility. Regardless of the fact that Burns et al. uses N-(aminopropyl)morpholine to reduce the volatility of the active compound, an artisan in the field would know that a composition comprising glyphosate possesses herbicidal activity, making it obvious to combine Burns et al.

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with one of the other references cited. As a side point, without considering Burns et al., Kliegman et al., Itoh and Rodham et al. make obvious the instant invention based on the following:

1) Kliegman et al. suggest a composition comprising a cyclic amide (abstract, column 2 lines 19-22) and paraquat (column 4 lines 18-32);

2) Itoh et al. suggest a composition comprising cyclic amides or cyclic amines such as 1,3-dimethyl-2-imidazolidone (abstract, paragraphs 91 and 92) and paraquat (paragraphs 108, 114-115); and

3) Rodham et al. suggest a composition that can contain a water soluble amine including aminoethylpiperazine (paragraph 27) and a pesticide including the herbicide paraquat (paragraph 59).

### **Election Status**

The elected invention comprising paraquat and aminopropylmorphilline is not allowable. See rejection above. Applicants argue that claims 8-22 should be examined. The Examiner reminds Applicants that claims 8-22 were not examined, because Applicants response to the Election requirement did not name species for claims 8-22. The Examiner argues that claims 8-22 add new limitations to the elected composition which would require further search and the application of new references. For these reasons claims 8-22 will not be considered and the election requirement is finalized.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

#### **Telephonic Inquiry**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALTON N. PRYOR whose telephone number is (571)272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alton N. Pryor/

Primary Examiner, Art Unit 1616